

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1661 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARESHBHAI CHIMANLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

Mr. H.R.Prajapati, for M/S THAKKAR ASSOC. for Petitioner
Mr. S.C.Patel, Addl. Standing Counsel for the Central
Govt.(absent).
Mr. D.N.Patel, A.G.P. for respondent nos.1 and 2.

CORAM : MR.JUSTICE S.M.SONI
Date of decision: 02/05/96

ORAL JUDGEMENT

The petitioner detenu has filed this petition under Article 226 of the Constitution of India against the order of detention dated 23.1.96 passed by the State Government in exercise of the powers conferred under sub-section(1) of Section 3 of the Prevention of Black Marketing and Maintenance of the Supplies of Essential Commodities Act,1980 ("the PBMC Act"for short) with a view to prevent him from acting in any manner prejudicial to the maintenance of the supply of the commodities, that is, Fair Price Shop wheat and edible oil, essential to the community. Alongwith the order of detention, the detenu is also served with the grounds of detention and necessary documents relied on bythe Government for passing the impugned order of detention as required by sub-sec.(1)of sec.8 of the PBMC Act. The petitioner is alleged to have committed certain irregularities to the effect that though his licence for Fair Price Shop was cancelled on 12th August,1995, he has sold 88 tins of edible oil on the date of inspection, that is, 13th September,1995 which suggests that the detenu has retained the stock beyond the permissible limits of 5 quintal. He did not produced necessary records at the time of inspection. He has alsonot prepared the bills for sale of edible oil and it is found that he is selling the same without issuing bills.

2. This order of detention is challenged by the detenu on numerous grounds, however, following is pressed into service.

Learned advocate for the petitioner has contended that the detenu has forwarded the representation with forwarding letter dated 31st January,1996 addressed to the Jail Superintendent, Palanpur Sub Jail, Palanpur, District Banaskantha with a request to make out copies thereof, to obtain signature thereon of the detenu and sent it to the authorities competent to consider the same and revoke the impugned order of detention.The jail authority did send the said representationto the State Government which came to be rejected and the detenu was communicated of the same on 8th February,1996. However, it is clear from the record that a copy of the said representation of the detenu is not forwarded to the Central Government who has also power to revoke the order of detention, if satisfied with the representation. On the contrary, the jailor of Palanpur Sub Jail, Palanpur has written a letter to the advocate for the detenu informing that if other copies are to be sent, then, copies with addresses be sent so that further action in the matter can be taken. The jailor, by this communication, wanted to convey that the advocate

concerned should send further copies of the representation with proper addresses to the jailor and then, the jailor will forward the same to the addressee authority concerned. Thus, it is an admitted fact that except a copy received by the jailor which he send to the State Govoernment, he has not copied the said representation and send it to the other authorities competent to consider and decide the representation. Dr. K.V.Jacob, Under Secretary in the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, New Delhi has, in his affidavit filed in the matter, specifically stated that they have not received any such representation. It is settled legal position in case of Amir Shad Khan v. L.Hmingliana & others, reported in A.I.R.1991 pg.1983, that once the detenu makes a request to prepare copy of the representation and forward it to the authorities who had power to revoke it, it becomes obligation on the part of the authority to comply with the same as it would be non compliance with the provisions of Article 22(5) of the Constitution of India. In case of Amir Shad Khan, (supra), the Supreme Court has observed as under in para 10 of the judgment:

"We are, therefore, of the opinion that the Detaining Authority as well as the State Government were not justified in taking a hyper-technical stand that they were under no obligation to take out copies of the representation and forward them to the Central Government. We think that this approach on the part of the Detaining Authority and the State Government has robbed the appellants of their constitutional right under Article 22(5) read with S.11 of the Act to have their representation considered by the Central Government. The request of the detenus was not unreasonable. On the contrary, the action of the Detaining Authority and the State Government was unreasonable and resulted in a denial of the appellants' constitutional right. The impugned detention orders are, therefore, liable to be quashed. "

3. Mr. Patel, learned Addl.G.P. contended before the Court that it is not the detenu who has made the representation but it is the advocate for the detenu who has send the same to the jail authority. Said advocate as well could have sent the representation to the concerned authorities. Therefore, it was not obligatory on the part of the State Government to take out copies of the representation and send it to the concerned

authorities. It may be that the advocate might have obliged the detenu by preparing the representation but the advocate need not oblige him further by taking out copies of the same giving addresses of the concerned authorities. It is the duty rather than an obligation on the part of the jail authorities to take out copies of the representation and send the same to the concerned authorities. Non compliance of the same has, in this case, resulted into infraction of Article 22(5) of the Constitution of India in as much as the representation is not forwarded to the concerned authority and the concerned authority could not consider the same. It cannot be said that the request of the advocate on behalf of the detenu was unreasonable and could not be complied with. State is the mighty authority for whom compliance of the request of the detenu was a very small thing. The Supreme Court has, in case of Amir Shad Khan, (Supra), taken this view in the year 1991. Representation was sent to the jailor on behalf of the detenu on 31st January, 1996. On the next day, jailor has replied to the advocate to take out the copies of the representation with addresses and send it back to the jailor. It is assumed and presumed that the jailor knew the law particularly as to the detention when he is in control of the detainees under different laws. As the copies are not prepared and sent to the concerned authorities by the jailor, concerned authorities could not decide the same and this amounts to denial of the constitutional right of the detenu as enshrined under Article 22(5) of the Constitution of India and this vitiates the impugned order of detention.

4. As the order of detention is vitiated because of the inaction on the part of the jailor to comply with the request of the detenu despite the settled legal position in case of Amir Shad Khan, (supra), the impugned order of detention is liable to be quashed and set aside on such a technical ground and, therefore, I am of the opinion that the concerned jailor should be saddled with the costs of this petition which is quantified at Rs.500/-.

5. In the result, this petition is allowed. The impugned order of detention dated 23rd January, 1996 passed by the Deputy Secretary to the Government of Gujarat (Annexure "A") is hereby quashed and set aside. Respondent No.2 is directed to set the petitioner-detenu at liberty forthwith unless his presence is required in connection with any other case. Jailor of Palanpur Sub Jail, Palanpur, District Banaskantha who was in charge of the jail on 1st February, 1996 shall personally bear costs of this petition which is quantified at Rs.500/- (Rupees

five hundred only). Rule is accordingly made absolute to the aforesaid extent.

6.4.96

Per court:

The Jailor is directed to deposit the aforesaid amount of Rs.500/- with the High Court Legal Aid Committee.